

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CONNECTICUT BANK OF)	
COMMERCE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-762 SLR
)	
THE REPUBLIC OF CONGO,)	
)	
Defendant;)	
)	
CMS NOMEKO CONGO INC.,)	
)	
Garnishee.)	

**GARNISHEE CMS NOMEKO'S OPPOSITION
TO AF-CAP'S MOTION TO SUBSTITUTE PARTIES**

Garnishee CMS Nomeco Congo Inc. (now named CMS Nomeco Congo LLC) ("CMS Nomeco") opposes the Motion to Substitute Parties filed by Af-Cap, Inc. ("Af-Cap"). In support of its Opposition, CMS Nomeco states the following:

Af-Cap's Motion to Substitute Parties is based on its contention that Af-Cap acquired the debt that is the subject of this action from the FDIC, as receiver for Connecticut Bank of Commerce, by way of an Assignment Agreement, which is referenced as Exhibit A to the motion, but which was not in fact attached to the motion. At oral argument in the United States Court of Appeals for the Fifth Circuit on June 5, 2006, in Af-Cap's appeal of the dismissal of its Texas garnishment litigation against CMS Nomeco and other companies, Af-Cap's counsel argued that the fact that Af-Cap purportedly acquired its interest in the debt from the United States government had legal significance to its claims against CMS Nomeco.

Prior to the filing of the motion to substitute parties, CMS Nomeco had communications with Af-Cap's counsel concerning the fact that, on the information and belief of

CMS Nomeco, Connecticut Bank of Commerce was acting on behalf of Af-Cap with regard to the collection of the debt, such that Af-Cap owned the rights in the debt prior to the alleged Assignment Agreement with the FDIC. The motion to substitute parties makes no reference to that issue, and despite the issue having been raised in connection with the motion to substitute, counsel for Af-Cap has provided no information on that issue. In light of the arguments of Af-Cap's counsel before the Fifth Circuit that acquisition of the debt from the FDIC should have legal significance with regard to Af-Cap's claimed rights against CMS Nomeco, CMS Nomeco respectfully requests that the Court defer a ruling on the motion to substitute parties until after CMS Nomeco has the opportunity to develop through discovery the facts relating to Af-Cap's interest in the debt prior to the alleged transaction with the FDIC. CMS Nomeco will submit requests for production of documents, interrogatories, and a Rule 30(b)(6) deposition notice to Af-Cap which will include, *inter alia*, issues relating to Af-Cap's acquisition of and ownership of the debt prior to the alleged Assignment Agreement with the FDIC, and will supplement its response to the motion to substitute once that discovery is completed.

CONCLUSION

For the reasons set forth above, CMS Nomeco Congo Inc. (now named CMS Nomeco Congo LLC) requests that the Court defer a ruling on Af-Cap's motion to substitute parties until after completion of the discovery referenced herein.

Respectfully submitted,

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1825599

/s/ M. Duncan Grant

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